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Year of Call: 1997

Profile

Michael is a commercial chancery practitioner. His practice encompasses commercial litigation and arbitration as well as litigation and advisory work in more traditional chancery areas with a strong interest in liability claims against professionals and fiduciaries. Before being called to the Bar, Michael worked for several years in fine art publishing and that business experience gave Michael an insight into the concerns of clients and an ability to see things from their perspective. Michael later studied law at King's College London where he obtained the Strand Trust Prize for the highest first class degree in his year. Michael is hands-on and approachable and combines both a rigorous intellectual approach and commercial awareness in seeking to achieve the best possible results for his clients.

Michael is married with two sons and lives in Cambridge. He is a member of the Chancery Bar Association, the Commercial Bar Association and the Professional Negligence Bar Association.

International Arbitration

With numerous business agreements, whether commercial contracts, partnership or joint venture agreements, as well as most commercial leases, containing arbitration clauses, Michael has gained experience and a growing interest in this area. Michael is particularly adept at assimilating cases involving complex underlying issues and he acted in a long-running international arbitration between software manufacturers as to the correct interpretation of a licensing agreement, which required the assembly and deployment of a large volume of complex expert evidence. Michael has also acted in a number of arbitrations between professionals, such as solicitors, doctors and veterinary practitioners, arising out of partnership disputes.

Chancery

Alongside his work in the area of professional liability, this is Michael's main area of expertise with most of Michael's work taking place in the Chancery Division in the Royal Courts of Justice or in Chancery District Registries. Michael's practice can genuinely be described as spanning both the commercial, in the form of internal business disputes between shareholders, directors and partners, lending and insolvency, and the more traditional chancery areas of practice such as property, wills and trusts. Michael is often called upon to pursue equitable remedies such as injunctions, declaratory relief, rectification or subrogation.

Michael's areas of practice in this field are principally the following:

- **Internal Business Disputes** Michael has acted in numerous minority shareholder petitions and claims against directors for breach of their fiduciary duty as well as partnership disputes. Michael also advises on company law.
- **Lending/Insolvency** Michael regularly acts for lending institutions, and on occasion for borrowers, in relation to the enforcement of charges and guarantees. Such work gives rise to a broad range of issues such as the avoidance of charges for forgery, undue influence and incapacity, subrogation, priorities between charges and between charges and other interests in land, overriding interests, land registration practice and procedure. Michael also acts and advises in relation to both personal and corporate insolvency and in particular claims setting aside prior transactions.
- **Property** Michael advises and acts in a wide range of disputes concerning real property such as contracts for the sale of land, options and overage agreements, easements, restrictive covenants, land registration and adverse possession. Michael has also acted in many co-ownership disputes and cases of proprietary estoppel. Michael also acts in relation to all aspects of landlord and tenant and has recently been advising in a number of claims relating to leasehold enfranchisement, forfeiture and the interpretation of rent review provisions.
- **Trusts** Whether advising in relation to the interpretation of strict settlements or invoking trust principles in relation

to commercial litigation, Michael is well-versed in all aspects of trusts. He regularly acts and advises in claims both for and against trustees for breach of trust, the removal and replacement of trustees and in relation to proprietary claims, tracing, accessory liability and constructive trusts in relation to civil fraud and breach of trust claims. Michael also acts in beneficial co-ownership disputes.

- **Wills and Probate** Michael frequently advises personal representative and beneficiaries in relation to the interpretation of testamentary documents and other matters arising in the administration of estates. He also acts in claims regarding the validity and rectification of wills as well as in inheritance act claims.
- **Equitable Remedies** Whether preserving the position pending trial or as substantive relief in its own right, Michael has experience of obtaining injunctions and freezing orders and claims for rectification or declarations supporting a right of subrogation.
- **Chancery related Professional Liability** Through Michael's specialism in commercial chancery practice, he has developed a significant practice in related professional liability claims. Michael's familiarity with the underlying areas of practice enables him to deal effectively and knowledgeably with claims arising out of property or financial transactions or private client matters. He has substantial experience in dealing with claims against solicitors, both in their capacity as legal advisers but also in their fiduciary and representative capacity, and against financial advisers and accountants.

Commercial Dispute Resolution

Michael acts in a wide range of commercial disputes ranging from more straightforward claims for breach of commercial contracts to sale of goods claims, claims for rescission of contracts for misrepresentation, claims arising out of business or share sale agreements and warranties and claims to enforce guarantees and other security. Michael also advises in cases where the issue concerns contract formation or the true construction of commercial documents or the operation of exclusion clauses, Many of the commercial disputes in which Michael is instructed have a chancery-related element for example following the commission of a civil fraud where a proprietary claim is made in respect of the beneficial ownership of assets or where questions of rectification of documents arise. Michael is experienced in seeking injunctive relief, including freezing injunctions and other interlocutory orders under the *Norwich Pharmacal* and *Bankers Trust v Shapira* jurisdictions. Michael is also interested in claims with an international dimension. Some examples of Michael's recent commercial cases are:

- the enforcement of a covenant in a contract between a haulage company and a supplier of transport services to the company prohibiting the solicitation of business by the supplier from the company's customers
- acting for the buyer of a £700,000 property who was defrauded by a fraudulent seller and a fictitious firm of solicitors in connection with a proprietary claim against assets held by various banks and other third parties
- acting for a Dubai software distributor in connection a claim brought against it by an English reseller over the supply of parallel imported computer software
- acting in connection with a breach of a joint venture agreement concerning the development of a wood fuel power station in Wales
- a claim against a utility procurement consultancy in relation to the failure to negotiate appropriate contracts for the supply of electricity to a substantial office block in the City of London
- advising a university department on claims arising from the breach of a joint venture agreement with a healthcare company concerning the development of a veterinary treatment for horses
- acting on behalf of an English printer software company on an application by a US corporation for voluminous disclosure under the Evidence (Proceedings in other Jurisdictions) Act 1975 for use in a US patent dispute with a well-known manufacturer of computer printers
- acting in a dispute between a web-site designer/computer programmer and an e-commerce business over web-hosting and web-site maintenance arrangements
- acting for a design studio defending a claim of alleged economic damage caused by defective photography for a catalogue and promotional material intended for use at a trade fair
- advising turf growers in a sale of goods dispute with seed suppliers over the supply of defective grass seed

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Professional Liability

Drawing upon his commercial chancery practice Michael has built a significant practice in the field of related professional liability. Michael's familiarity with the underlying areas of practice enables him to deal effectively and knowledgeably with claims arising out of a very broad range of business transactions in relation to property or finance and in relation to claims arising out of conveyancing, lending, will-writing or private client matters. He has substantial experience in dealing with claims against solicitors, both in their capacity as legal advisers but also in their fiduciary and representative capacity, and against financial advisers, accountants and valuers.

Michael has been dealing recently with an increasing number of claims relating to property development and planning, alleged failings by trustees and other fiduciaries in investment strategy and in claims arising out of mortgage lending where there has been forgery, identity theft or some other underlying fraud.

Michael has given talks to professional indemnity insurers and panel firms on solicitors' negligence in landlord and

tenant cases and in relation to wills, trusts and probate.

Some examples of Michael's recent cases are:

- acting for solicitors advising executors in relation to the failure to advise of relief against inheritance tax for sale of shares at less than probate value during the period of 12 months from death
- acting for solicitors and property management companies in claims arising out of the failure to serve options to determine leases strictly in accordance with the time limits and terms of the lease
- acting for solicitors facing a breach of warranty claim by buyer of one of the most expensive properties in Mayfair where one of co-sellers claimed not to have given the solicitor authority to exchange contracts
- acting for solicitors in relation to claim by buyer of vineyard concerning onerous overage provision in the event planning permission was obtained for development
- acting for various lenders in relation to claims for breach of trust, breach of fiduciary duty and breach of contract for failing to comply with mortgage instructions and Law Society's Green Card and other warnings in relation to mortgage fraud
- acting in various claims arising from mortgage fraud and in particular identity theft, giving rise to claims of breach of warranty of authority and land registry indemnity issues
- acting for solicitors in a claim against solicitors and planning consultants arising out of the conditional sale of land to a national house-builder where it was alleged that the sellers were not advised of need to terminate the agreement by service of a notice
- acting for solicitors in relation to the failure to claim an exemption from inheritance tax for works of art prior to a change in the law altering the qualifying test to a more stringent test of pre-eminence
- acting in various claims where solicitors have failed to take instructions on how the beneficial interests in property are to be held
- acting in various claims arising out of failed or defective applications for collective enfranchisement and lease extensions
- acting for solicitors where it was alleged insufficient precautions had been taken to avoid a subsequent challenge to the validity of a will on the grounds of a lack of testamentary capacity or undue influence
- acting in relation to claim against a solicitor for dishonest assistance in relation to the unauthorised drawing of money by the finance director from his company
- acting for a retired national newspaper journalist in a claim against his former solicitors for loss of the chance to bring a claim against his former employers and trustees of the company pension scheme concerning negligent pension advice which had led him to accept voluntary early retirement
- advising a large and profitable family company in a claim against an accountant over allegedly negligent advice in formulating a company share purchase scheme
- advising a bank in relation to various claims by investors taking out life assurance products in respective of failings to advise on and clarify tax implications of entering into simultaneous deeds of trust
- acting for lender in substantial claim against valuers for overvaluing commercial premises giving rise to commercial lending relationship which would not otherwise have arisen

Accountants, Auditors & Actuaries

Michael has acted in claims both against and for accountants in particular in relation to schemes to save inheritance tax and other tax saving schemes. Michael has recently been acting in claim against an accountant for failing to give ancillary advice to an elderly couple subscribing for shares in a business run by their son and in a claim where it is alleged an accountant advised inappropriately in relation to the surrenders of leases as a tax mitigation device.

Financial Services Professionals

Michael is regularly asked to advise in claims against financial advisers particularly in relation to the misselling of investments and failing to advise on the risk profile of investments in equities. Michael has recently been advising a bank in relation to various claims by investors taking out life assurance products where it is alleged the financial adviser failed to provide ancillary advice on tax implications where an investment was to be written in trust.

Lawyers

Advising in claims against solicitors in their professional and representative capacity is a very significant part of Michael's practice. Michael's commercial chancery practice lends itself naturally to claims arising out of business transactions in relation to property or finance and in relation to claims arising out of conveyancing, lending, will-writing or private client matters. Michael has been dealing recently with an increasing number of claims relating to property development and planning, alleged failings by trustees and other fiduciaries in investment strategy and in claims arising out of mortgage lending where there has been forgery, identity theft or some other underlying fraud. Michael has given talks to professional indemnity insurers and panel firms on solicitors' negligence in landlord and tenant cases and in relation to wills, trusts and probate.

Some of Michael's recent cases include the following:

- acting for solicitors advising executors in relation to the failure to advise on the availability of relief against inheritance tax where shares are sold at less than the probate value during the period of 12 months from death and where land is sold for less than the probate value with the period of 4 years from death
- acting for solicitors in relation to a defective scheme to reduce inheritance tax by claiming business property relief for shares in a company which acquired art and antiques
- acting for solicitors and property management companies in claims arising out of the failure to serve options to determine leases strictly in accordance with the time limits and terms of the lease
- acting for solicitors facing a breach of warranty claim by buyer of one of the most expensive properties in Mayfair where one of co-sellers claimed not to have given the solicitor authority to exchange contracts
- acting for solicitors in relation to claim by buyer of vineyard concerning onerous overage provision in the event planning permission was obtained for development
- acting for various lenders in relation to claims for breach of trust, breach of fiduciary duty and breach of contract for failing to comply with mortgage instructions and Law Society's Green Card and other warnings in relation to mortgage fraud
- acting in various claims arising from mortgage fraud and in particular identity theft, giving rise to claims of breach of warranty of authority and land registry indemnity issues
- acting for property development company in a claim against solicitors and planning consultants arising out of the conditional sale of land to a national house-builder where it was alleged that the sellers were not advised of the need to terminate the agreement by service of a notice
- acting for solicitors in relation to the failure to claim an exemption from inheritance tax for works of art prior to a change in the law altering the qualifying test to a more stringent test of pre-eminence
- acting in various claims where solicitors have failed to take instructions on how the beneficial interests in property are to be held
- acting in various claims arising out of failed or defective applications for collective enfranchisement and lease extensions
- acting for solicitors in relation to claims where it is alleged insufficient precautions have been taken to avoid a subsequent challenge to the validity of a will on the grounds of a lack of testamentary capacity or undue influence
- acting in relation to claim against a solicitor for dishonest assistance in relation to the unauthorised drawing of money by a finance director from his company

Surveyors & Valuers

It is frequently the case that a defective property transaction involving the acquisition or disposal of land gives rise to a consideration of a claim against a surveyor or valuer. Michael is therefore regularly instructed in claims particularly against valuers in relation to secured lending transactions. Increasingly, Michael is seeing more complex claims arising out of commercial lending relationships which have failed where the relationship was informed by valuations of commercial premises. Michael recently acted for a leading high street bank in a claim against a firm of valuers where valuations of commercial premises were relied on to lend over £2m to the new owners of a horticultural business importing produce from Africa and to continue to support the business through its initial financial difficulties. The case involved a substantial body of expert evidence in the field of commercial lending.